

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Cecil Bailey,
Petitioner

v.

Case No. 1:09-cv-782

Warden, Lebanon Correctional
Institution,
Respondent

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed August 27, 2010 (Doc. 15).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Respondent's motion to dismiss is **GRANTED** and the petition for writ of habeas corpus is **DISMISSED** with prejudice, on the ground that it is barred from review under the one-year statute of limitations set forth in 28 U.S.C. § 2244(d).

A certificate of appealability will not issue with respect to the petition, which is barred by the statute of limitations, because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason"

would not find it debatable whether the Court is correct in its procedural ruling.

This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

Date: September 22, 2010

s/Sandra S. Beckwith
Sandra S. Beckwith, Senior Judge
United States District Court